

COURT DECISIONS.

[GALVESTON TERM, 1883.]

Court of Appeals.
Houston et al. vs. the State.—From Gonzalez county. Opinion by Wilson, J. A proceeding upon a forfeited bond is in effect a suit upon the bond, in which the scire facies serves the purpose of both a petition and citation. Its foundation is the bond and the judicial declaration of the forfeiture of the bond, which is the judgment nisi. To entitle the state to a judgment final, it must prove the cause of action as in a civil suit. The proof is made by: 1. The bond; and 2. The judgment nisi declaring its forfeiture. In this case the judgment nisi was not introduced in evidence, and therefore the proof is insufficient to support the judgment final, and for this reason the judgment must be reversed. Reversed and remanded.

The state of Texas vs. Willis Arrington and R. A. Houston.—Appeal from Gonzalez county. Opinion by White, P. J. In this case an appeal is sought to be taken by the state from a judgment of the court below quashing a bail bond. The appellants come and by motion filed move the court to dismiss the appeal, because the case is a criminal case, and the state is prohibited as appellant in such cases. Under previous decisions of the supreme court and of this court the motion is well taken and must be sustained. (Const., art. 5, sec. 28; of the state vs. Ward, 9 Ct. App., 462, and authorities cited; Hart vs. State, in this issue.) Appeal dismissed.

Arrington et al. vs. the State.—From Gonzalez county. Opinion by Wilson, J. The court erred in admitting the bail bond in evidence. The bond shows on its face that it was taken and approved by a constable in Gonzalez county while the bond declared upon in the scire facies is described as one taken by the sheriff of Gonzalez county. Held, a scire facies performs the double functions of petition and citation and in establishing the essential matters therein the allegations and probata must correspond. Appellants claim that the bond is void because it was taken by the constable while the court below which the prosecution was pending was in session. [C. C. P., art. 304.] It was proved that the bond was taken and approved by the constable in open court, and that thereupon the defendant was discharged from custody and left before the court adjourned. Under this state of facts it is held that it must be presumed that the bond was taken with the knowledge and sanction of the court, and was in legal contemplation taken by the court. There is no provision of the statute which requires that the court should approve the bond. All the statute requires is that the bond shall be signed by the principal and his sureties, the magistrate first being satisfied as to the sufficiency of the security. [C. C. P., art. 312.] Reversed and remanded.

Houston vs. the State.—From Gonzalez county. Three cases. Opinion by Wilson, J. It was proper for the county court to render and enter judgments final upon the judgment nisi at a civil term of said court. This is contrary to the decision in *Cassidy vs. the State*, 1 Ct. App., 96; *Carter vs. the State*, 1 Ct. App., 613. But those decisions were rendered before the adoption of the Revised Code of Criminal Procedure, and in view of the changes made in that code, are no longer applicable. As the law now is, the docket after judgment nisi, and it is proper practice to hear and examine scire facies at a civil instead of at a criminal term of the court. Affirmed.

Arrington et al. vs. the State.—From Gonzalez county. Opinion by Wilson, J. Defendant was arrested under a warrant issued by a justice of the peace, of DeWitt county, founded upon a complaint charging him with a felony committed in Gonzalez county, and the warrant was made returnable before the county judge of the latter county, but the examination of the case was had before a justice of the peace of Gonzalez county. Held, no error, because the justice of the peace was a magistrate and had jurisdiction to hear and determine the case as an examining court. It is objected to the bond, that it fails to set out any offense against the law and does not set out the same offense as named in the complaint. In the bond the offense is stated to be theft of neat cattle. In the complaint defendant is charged with stealing "one two year old steer and two yearlings." Held, "theft of cattle" is an offense against the law of this state and the use of the adjective "neat" does not affect the character of the act, and besides all cattle are neat cattle. Theft of a steer and yearlings would be theft of cattle, and hence there is no variance between the offense named in the complaint and that named in the bond and subsequent proceedings. Affirmed.

Esher vs. the State.—From Cass county. Opinion by White, P. J. Without a bill of exceptions this court has no authority to revise the action of the lower court in any matter pertaining to the rulings of the court in overruling applications for continuance. With the evidence as it appears in the statement of facts, there was no error committed by the court in declining to charge upon a lower grade of offense than murder in the second degree. [C. C. P., art. 10 Texas Law Review.] A complaint is made that the court erred in overruling defendant's motion for a new trial based in part upon newly discovered evidence. If the witness Metcalkey was present at the difficulty, then defendant must have known or could easily have ascertained the fact; and if he knew or could have known by ordinary care and effort the fact, then the evidence does not come within the rules of newly discovered testimony, nor does the defendant show such diligence as would entitle him to a new trial upon this ground. Affirmed.

G. Kemp vs. the State.—From Erath county. Opinion by Wilson, J. This case was formerly before this court upon appeal from a conviction of murder in the first degree. [11 Ct. App., 178.] The appeal is from a conviction of murder in the second degree, with the penalty assessed at confinement in the penitentiary for twenty-eight years. A number of errors are assigned, but

no error apparent of which appellant can complain. The charge is very full, fair and impartial, clearly presenting the law of the case. The indictment is good and sufficient, and failing to find an error the judgment is affirmed.

Simon Hart et al. vs. the State of Texas.—Writ of error from Bowie county. This is a writ of error sent out by appellants to revise the action of the district court of Bowie county, in rendering a final judgment on a forfeited bail bond. A motion is made by the assistant attorney-general to dismiss the writ of error upon two grounds, because, to wit: 1. This case is a civil suit and the Court of Appeals has no appellate jurisdiction in civil cases tried in the District Court. 2. If this case is a criminal case then the Court of Appeals has no jurisdiction to revise a criminal case by writ of error, but only by appeals.

After the organization of the Court of Appeals under our present state constitution, the question as to whether scire facies cases on forfeited bail bonds and recognizances were and should be treated as civil or criminal cases, came up for adjudication both in the supreme court and in the court of appeals, and was most ably and elaborately argued in both courts, the questions being the ones substantially as here presented. In determining these questions no written opinion was delivered in either court, but a majority of the judges in each court were of opinion that all such cases were criminal, and that the jurisdiction on appeal attached to and properly belonged exclusively to the court of appeals. Since that time the practice to so regard them was uniform. (Aber vs. Ward, 49 Tex., 377, up to the time of the adoption of the Revised Statutes. It is evident that the commissioners to revise and codify the laws were of opinion that these cases were and should be treated as civil and not as criminal cases, and that they have made them so in so far as they could by the practice and procedure provided for such cases. [C. C. P., arts. 414, 449, 456, 501, 502, 503, Rev. Stats., arts. 159, 159B, 159C, 159D, 159E, 159F, 159G, 159H, 159I, 159J, 159K, 159L, 159M, 159N, 159O, 159P, 159Q, 159R, 159S, 159T, 159U, 159V, 159W, 159X, 159Y, 159Z, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.]

Young County.
Graham, March 21.—Everything is remarkably dull here owing to a measure to measles taking in the town. Mr. W. L. Graves the GAZETTE's worthy representative arrived in Graham Saturday and left this morning on his ramble.
Messrs. L. J. Mathis, Seymour, W. R. Benedict, E. L. Brown, Bill Clark, Oliver Loving, Joe Graham, cattle-men, were in town this week.
Miss Lois Keman one of Graham's loveliest young ladies has been seriously ill with a relapse from measles, but is now rapidly recovering.

MILAM COUNTY.
Milam, March 22.—This place situated at the junction of the G. C. & S. F. and L. & G. N. railroads, the two great thoroughfares crossing the state in both directions, occupies a most favored position. Its growth during the past three years has been steady, and still continues. While in the immediate neighborhood of the town the land is rather poor, yet on three sides it is surrounded by some of the finest farming lands in Texas. Timber and water in abundance; society, school and church facilities will compare favorably with other portions of the state. The Methodists and Baptists hold services regularly in this place. An excellent school is being taught by Mrs. Dr. Spring. A very

fine hotel was built here two years ago, at which the trains on the Gulf Colorado & Santa Fe railway stop for dinner.
The Gulf Colorado & Santa Fe Railway Company have recently established a large coal yard at this place, where they are storing a vast quantity of coal.

Several coal mines have been opened; one being worked successfully some five miles west of here. The company working them are sanguine of producing at a greater depth a first rate article of coal.

Corn-planting is about finished. The recent cold snap was sufficient to injure early corn. Fruit trees have made a poor effort in blooming this spring. Grass is doing well, but the abominable heel-flies keep the poor old cows in the shade and mudholes most of the day.

LIZZIE NUTT.

Horrorful Picture of the Home Where Dukes Carried Ruin and Death.
 (Unlabeled special to Philadelphia Times.)

The residence of the late Captain Nutt is a fine, winged, bay-windowed, brick building, situated on a hill overlooking the city. Your correspondent called there this afternoon and had an interview with Miss Lizzie Nutt and her mother, Miss Lizzie is pretty, her hair is light brown, with just a suspicion of redness about it; her eyes are large, hazel and liquid; her mouth is small and delicately shaped and her figure is slender and graceful. The expression of her face shows that she has suffered a great deal. In fact, she looks and acts as though she were completely broken down, mentally and physically. She expressed a willingness to do all she could to refute the allegations made against her by Dukes and tried hard to be calm and collected during the interview, but tears gushed to her eyes frequently and once she burst out crying. She sat near a center table while speaking, and toyed with a pretty picture of an oriole, which was perched on an easel.

"There is not a word of truth," she said, "in Mr. Dukes' letter. What induced him to write them I cannot imagine, unless, indeed, his object was to manufacture an excuse for breaking our engagement. He said, 'I suppose, father would say nothing about the letters. When father showed them to me I was almost stunned. I told him they were untrue and asked him to request Mr. Dukes to call at the house and confront me with his statement. Mr. Dukes pretended that his personal safety would warrant him in coming, but in reality, he knew he had told falsehoods about me and was ashamed to look me in the face. Oh, that I should ever have loved such a man—but he is not a man. I can't understand how he won my affection. Everybody has been deceived by him and I most of all. We had been engaged several months. He was a constant visitor and was cordially received by the family. I did not suspect that he wanted the engagement broken. Why didn't he tell me? Such a course would have been manly and would have commanded my respect. Instead of doing this, however, he took my ring for the purpose, he said, of getting another that would better please him, but his intention was to get the ring out of my hands. Was that the act of a gentleman? Then he wrote those vile letters to father. All the world knows the rest. I would rather have died than that this misery and disgrace should have fallen on my mother and her family. But, indeed sir, I am innocent of each and every charge brought against me. Oh, that God would only let me die, for I shall never have any peace this side of the grave."

Mrs. Nutt sat in the room during the interview. She is a delicate and sweet-faced old lady. If her face may be taken as an index to her grief, her sufferings must have been severe. She corroborated her daughter's statement so far as her knowledge went, and then added that to say the least, the verdict of the jury had surprised her. There is a disposition among the leading people here to show Miss Lizzie that they do not believe Duke's allegations by inviting her to visit their families, as they think this is the only way by which all suspicion can be removed. She has not left home since her father was shot. Her physical condition is indicated by Dukes in his letters is false beyond doubt. Capt. Nutt was a gentleman of education and refinement. He was a studious reader and had one of the best private libraries in Pennsylvania.

A HERMIT'S HOME.

How the Lone Dweller in Rucker Valley Defies All Apache Intruders.
 (San Francisco Rural Press.)

Prof. Leannon and his wife recently returned from a botanizing trip in the wilds of Arizona. The professor bore letters of introduction to a curious old hermit, the only occupant of Rucker Valley, calling himself Dr. Monroe. That was their objective point. As they approached his cabin the noise of their feet stirred his hens to cackling, then the upper part of his door opened and the old hermit appeared a little old man with a hooked nose like an eagle's, a dilapidated straw hat over his right ear, long, fine hair, streaked with gray, and piercing black eyes. His clothing was half military and half frontiersman. He read the letter and then opened the lower part of the door and invited his guests in.

The hermit entertained his guests with stories of his life and his instruments of defense, which consisted of a certain tunnel, so ingeniously constructed that it is worthy of description. At the back of the cabin some sacks were carelessly hung, which, when drawn aside, disclosed what appeared to be a cellar, but which really was the opening of a tunnel 120 feet long, with a double elbow in the middle and cabin at each end. The tunnel was just high enough for himself, and he was a short man, only about 5 feet high. The bottom and roof were rough with double stones. The middle was enlarged to allow for strong defense. It was very dark and unless one was acquainted with it, it was of no use to try to follow the hermit. For defense in case he was overpowered, he had an arrangement of fuse carefully covered over with rock and

cobbles which when fired would blow up everything. This Dr. Monroe was a very intelligent man and had evidently moved in high circles. He had had some twenty-three different occupations in life, from playing the clarinet in a circus to teaching school in Virginia and practicing medicine. Hanging over the fireplace were not less than twelve hats, in different stages of dilapidation, and he was never seen without one of these on. He never put it square on his head, but always on one side. He kept cats and chickens, and when asked why he did not have a dog he said that several years ago he had a partner on a mining scheme and they had a dog which was considered very faithful. One day the partner returned to the cabin to get dinner, and when Dr. Monroe reached it an hour later he found his friend dead. The dog had not given the alarm of the approach of the Indians, but had skulked off and hid. After that he never had any faith in dogs.

Eating Their Own Beef.

(St. Louis Republican.)
 It is one of the curious features of the live-stock trade that this market has for some time been shipping cattle to the Texas butchers, that prolific stock growing region being temporarily destitute of fat beef. Thus it happened that at the banquet of the stock convention held at Fort Worth the St. Louis delegation were ushered into the banquet hall with the invitation, "Come in and eat some of your own beef." Some days ago an evening paper of this city published a communication in which it was charged that the convention was organized to create a cattle corner, whereas the *Live Stock Journal* curtly remarks: "Mr. Porter is not aware that the convention had to eat chuck steaks from St. Louis, and paid the ruling prices in that market for the article."

Wolves and Broodmares.

(Independence, Mo., Sentinel.)
 Mr. John T. Shawhan, one of the fine stock raisers of Van Buren township, gives the following statement which may benefit others interested: He had ten mares all with foal and at one time; during the winter the wolves killed one of his sheep in the pasture where his mares ran. A short time afterwards one of the animals lost her foal. At this Mr. S. took his mares from the field, having heard or read that the sight or smell of blood would cause mares to fail in this manner. Soon after this another mare lost in the same way, and so on till eight of ten lost their foals. Now comes another reason why the last ones were unfortunate, as a horse doctor says in his book that it is through the instinct of sympathy for the first colt-mother that the later ones met with the same fate.

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